

Utah Solid and Hazardous Waste Control Board
MEETING MINUTES
March 13, 2008

Board Members Present: Carlton Christensen (Chair), John Newman (Vice Chair), Michael Brehm, Scott Bruce, Craig Forster, Gary Mossor, Kevin Murray, Craig Anderson, Dennis Riding, Jeff Coombs, Rick Sprott, Kory Coleman, and Ryan Dupont.

Board Members Excused: None.

Staff Members Present: Dennis Downs, Brad Johnson, Scott Anderson, Marty Gray, Fred Nelson, Mike Pecorelli, Cheryl Prawl, Jon Parry, Don Verbica, Otis Willoughby, Raymond Wixom.

Others Present: Ben Clayton, L. Scott Williams, Jeff Mensinger, Melissa Scales, Kris Snow, Clark Nielsen, Robert Yarosik, Christopher Thomas, Tim Orton, Sheila Vance, Steven Christiansen, Angela VanDam.

I. Call to Order

Carlton Christensen (Chair) called the meeting to order at 1:05 p.m.

II. Approval of Meeting Minutes for the February 14, 2008, Board Meeting (Board Action Item)

John Newman moved to approve the February 14, 2008 Board meeting minutes. The motion was seconded by Craig Anderson and UNANIMOUSLY CARRIED.

III. Election of Board Chairman and Vice-Chairman (Board Action Item)

Michael Brehm moved to approve the reappointment of Carlton Christensen as the Board Chairman. The motion was seconded by John Newman and UNANIMOUSLY CARRIED.

Craig Anderson moved to approve the reappointment of John Newman as the Board's Vice-Chairman. The motion was seconded by Craig Forster and UNANIMOUSLY CARRIED.

IV. Underground Storage Tanks Update

Brad Johnson informed the Board members that the cash balance of the Petroleum Storage Tank (PST) Fund decreased approximately \$1 million from November to January. This decrease is attributable to about \$700,000.00 being spent on cleanup activities taking place at the Gunnison Top-Stop facility, while the rest is due to various owners/operators seeking reimbursement from the Fund due to end of the year activities. The currently cash balance is approximately \$11.6 million and it is expected that in the future the cash balance will continue to increase.

Mr. Johnson also informed the Board that in the next several months, it is anticipated that the Division of Environmental Response and Remediation (Division) will be bringing rule changes before the Board regarding secondary containment of Underground Storage Tanks (USTs), owner/operator training rules, and rules dealing with inventory control and Statistical Inventory Reconciliation (SIR). The Division has a number of years to implement the owner/operator training, but is meeting with various stakeholder groups to start putting the program together.

Dennis Riding inquired if the inventory control rules the Division is developing are specific to SIR or are the rules broader. Mr. Johnson explained that the Division has not made that decision and options and proposals will be discussed in depth with the Utah UST Advisory Task Force in order to determine what will work for the program and the industry. The goal is to reduce the risk of repeating a release like the one in Gunnison.

A. Gunnison Top-Stop Update

Mr. Johnson then provided the Board with an update on the cleanup activities taking place at the Gunnison Top-Stop facility. The large soil vapor extraction system in the central area of the plume is now operational, and it is projected that it will accelerate the amount of fuel that is being removed from the ground. It is estimated that approximately 6,800 gallons of fuel out of the 20,000 gallon release has been extracted from the ground at this time. Wind River Petroleum (Wind River) and its consultant, Wasatch Environmental, are required to submit a comprehensive corrective action plan by March 21, 2008. The plan will probably enhance the existing corrective action already being conducted at the site.

Mr. Johnson also explained to the Board members that a lawsuit was filed recently by a large number of plaintiffs against Wind River. The State of Utah has not been named as a defendant in this lawsuit, but the Division obviously has a strong interest in the case and as such, will keep track of what occurs with the lawsuit. The Division will also continue to satisfy the numerous amounts of information requests it receives regarding the Gunnison Top-Stop site.

Mr. Riding then questioned if there are any down-gradient surface water impacts with the plume. Mr. Johnson stated that the plume does not appear to impact any surface water. Wind River has installed a sparge curtain at the leading edge of the plume, and has installed monitoring wells between that sparge curtain and the San Pitch River, which is the closest source of surface water. No fuel has been detected in those monitoring wells and it is believed that the extent of the plume has now been quantified.

Michael Brehm asked that since the coverage limit of the PST Fund for the cleanup of this release has nearly been met, are there adequate financial resources available to continue so that it does not become an impediment to the cleanup. Mr. Johnson explained that he could not answer that question as he is not aware of the financial resources available to Wind River. However, in a recent Gunnison City Council meeting, Craig Larsen, who oversees the Top-Stop facilities throughout the State for Wind River, stated that they have already spent a couple of hundred thousand dollars more than the \$1 million coverage on the site and that they are committed to do whatever needs to be done in order to ensure that the release is remediated.

B. UST Legislation Update

With the Utah Legislative Session now in recess until next year, Mr. Johnson updated the Board members on the following four Legislative Bills:

House Bill (HB) 50, sponsored by Representative Sylvia Anderson. This Bill, which changes references in Utah statutes to the Solid Waste Disposal Act instead of the Resource Conservation and Recovery Act, passed both bodies of the Legislature.

HB 79, sponsored by Representative David Clark. This particular Bill, which included the sunset review of the UST Statute, also passed both the Senate and the House of Representatives.

Senate Bill 209, sponsored by Senator D. Chris Butters. This Bill, which requires the Utah Department of Health (UDOH) to establish standards for sites where methamphetamine is used and not just manufactured, passed the Legislature as well. The Bill also included provisions for public information requirements and the ability to give grants to the Local Health Departments to assist with this program. The original budget request for the Bill was \$500,000.00. However, with all of the budget constraints that the Legislature has to deal with, the budget was reduced to \$178,500.00. It is not known how the UDOH will implement this program with the reduction in budget, but it will have an impact on the decontamination specialist contractor certification that the Board oversees.

HB 230, sponsored by Representative Chris Herrod. This Bill, which included a stipulation that a company cleaning up a site with methamphetamine contamination could not be the same company that inspects the site to establish that it has been cleaned to acceptable levels, eventually died during the Legislative process.

V. Gold Cross Ambulance – Corrective Action Plan Appeal (UST), Approval of scheduling Order (Board Action Item)

After reviewing with the Board members what occurs during an administrative hearing, Raymond Wixom, Utah Attorney General's Office, presented the Board with a proposed scheduling order for the UST Corrective Action

Plan Appeal hearing. In the previous Board meeting, the Board members approved the Notification of Further Proceedings regarding this appeal and encouraged all parties to propose a scheduling order. This proposed order is now being presented before the Board for approval. Most of the events that will occur under this scheduling order will not directly impact the Board members. However, it is proposed that June 12, 2008, the day of a regularly scheduled Board meeting, be approved as the day the Board holds this hearing.

It was motioned by Scott Bruce and seconded by Kevin Murray, and UNANIMOUSLY CARRIED that the Scheduling Order for the Gold Cross Ambulance UST Corrective Action Appeal be approved as it has been presented to the Board.

VI. Commercial/Federal Facilities

A. EnergySolutions LLC request for renewal of a site-specific treatment variance for high subcategory mercury (Board Action Item)

Otis Willoughby reviewed EnergySolutions' January 25, 2008 request for renewal of a site-specific treatment variance from the Utah Hazardous Waste Management Rules. The company seeks authorization to stabilize a waste stream that carries waste code D009 or U151 (High Mercury – Subcategory Inorganic). The treated waste will then be disposed at the Mixed Waste Landfill Cell. The Mixed Waste Facility proposes to receive waste streams from generators that carry the listed waste codes for High Subcategory mercury. The technology-based treatment codes for this material are either IMERC (incineration followed by recovery) or RMERC (roasting/retort) followed by recovery. The RMERC and IMERC processes generate secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) require further stabilization to a level of .2 mg/L based on the toxicity characteristic leaching procedure (TCLP) in SW846.

The USEPA has issued a Determination of Equivalent Treatment (DET) for such High Mercury Subcategory wastes. In its determination, the USEPA concluded that, for wastes that contain mercury and are radioactive, the recovery portion of RMERC or IMERC may not be appropriate and that alternative treatment processes should be pursued. EnergySolutions is proposing to stabilize the waste to a level below 0.2 mg/L, based on the TCLP method. This would satisfy the high mercury subcategory requirement. In addition, LDR compliance will be met for all other waste codes associated with the waste prior to disposal.

This variance, if granted, would be valid for the 2008 calendar year. EnergySolutions has requested similar site-specific treatment variances for High Subcategory Mercury. The Board approved those requests in January 2002, December 2003, June 2004, January 2005, January 2006 and January 2007.

A 30-day public comment period was held from February 5, 2008 to March 6, 2008 and no comments were received. A public hearing was held in the Tooele County Courthouse on February 21, 2008. No comments were received. The Executive Secretary recommends approval of this variance based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste. Also, EnergySolutions has successfully treated similar waste stream in the past using this approach.

Gary Mossor moved to approve EnergySolutions LLC, request for renewal of a site-specific treatment variance for high subcategory mercury received by the Executive Secretary on January 25, 2008. The motion was seconded by Dennis Riding and UNANIMOUSLY CARRIED.

VII. Used Oil Section

A. Approval of proposed changes to the Used Oil Rules: R315-15-1, 10, 11, 12, and 17 for final adoption (Board Action Item)

Cheryl Prawl reviewed the Division's proposal to make changes to the used oil management rules. The proposed changes affect the following used oil rules: R315-15-1, 10, 11, 12 and 17. The proposed rule changes include financial assurance mechanism forms that will be incorporated by reference in R315-15-17.

The used oil management rules cover the permitting of used oil facilities and the proper management and recycling of used oil in the state. A minor change was made to the rules in 1998 but substantial changes have not

been made since the rules were first promulgated in 1993. The purpose of the proposed changes is to update requirements for consistency with other Division program rules, provide more clarity, and to include requirements specified in the Used Oil Management Act that were not included in the original rules. In addition, standardized wording for the various financial assurance mechanisms have been requested by the regulated community to improve and streamline the permit application process.

An informal 30-day public review period was held from October 1, 2008, through October 31, 2007. Also, a scoping meeting was held on October 18, 2007 at UDEQ Building #2. Comments were received from only two facilities during the informal 30-day public comment period and no comments were received during the scheduled scoping meeting. A required 30-day public comment period on the proposed changes was held from February 2, 2008 to March 3, 2008. Only one facility provided comments during this public comment period. Based on the comments received, no changes are being proposed to the rules.

Provided in the Board's packet was a summary of the comments received and the Division's responses. Ms. Prawl stated that five comments were received from one facility and out of the five comments received, four were applicable, and one of the comments applied to rules that are not proposed for changes at this time. Ms. Prawl reviewed the comments received and the Division's responses. (The five comments and response to comments are included in the meeting minutes.)

Dennis Riding requested clarification regarding comment #2, as the commenter stated that R315-15-11.2(b)(1) is poorly written. Mr. Riding questioned if that is what the commenter really meant or did they feel that it was addressed elsewhere in the rules. Ms. Prawl agreed and stated that the commenter felt that this issue was already addressed adequately elsewhere in the rules and that it should not be repeated in the above mentioned section. However, the Division disagreed, and felt it needed to be included in both sections.

Craig Anderson moved that the proposed changes to the Used Oil Rules: R315-15-1, 10, 11, 12, and 17 be approved for final adoption. It was seconded by Jeff Coombs and UNANIMOUSLY CARRIED.

VIII. Hazardous Waste Management

A. Frontier Scientific Inc. request for a variance from the storage requirement of R315-7-16.6 for storage of ignitable or reactive waste (Informational Item Only)

Jon Parry reviewed Frontier Scientific's December 27, 2007 request for a variance from the Utah Hazardous Waste Management Rules. This request is a result of a compliance evaluation inspection conducted on September 12, 2007 which determined the proximity of the hazardous waste storage area to the property boundary. The company seeks authorization to store ignitable hazardous waste within 50 feet of the facility's property boundary.

Large quantity generators are not allowed to store ignitable or reactive hazardous waste within 50 feet of their facility's property line. Frontier Scientific is seeking a variance from this specific regulatory requirement for its spent ignitable solvents because it has determined that, even though its current hazardous waste storage location does not conform to this requirement, given the physical layout of the facility, the current location presents the best storage option for ignitable waste.

A 30-day public comment period was held from February 8, 2008 to March 10, 2008 and no comments were received. Also, a public hearing was held at the Bear River Health Department, March 5, 2008. No comments were received.

Due to questions raised by Board members during the February 14, 2008 Board meeting, Frontier Scientific has submitted to the Division a Risk Management Plan. A copy was provided to the Board in their March Board packet.

Mr. Parry noted that, in discussions with the local fire marshal, Frontier Scientific has decided to re-configure the hazardous waste storage area fifty feet from the property boundary. This will happen over a course of time and then the company would use the vacant area to store equipment, etc. Therefore, Frontier Scientific is still pursuing the variance. Carlton Christensen clarified that with the suggestion from the local fire marshal, Frontier Scientific would not need the variance once they have accomplished the move. Mr. Parry agreed and stated that the variance will keep Frontier Scientific in compliance until such time as they make the changes. Board members questioned if the changes would be able to be made in the one-year timeframe. Mr. Parry anticipated

that the changes will be made within one year. The Executive Secretary recommends that this variance request be granted for a period of one year.

John Newman moved that Frontier Scientific's request for a variance from the storage requirement of R315-7-16.6 for storage of ignitable or reactive waste be approved for a period of one year. It was seconded by Craig Forster and UNANIMOUSLY CARRIED.

IX. Chemical Demilitarization

A. TOCDF Update

Marty Gray informed the Board that TOCDF continues to process the mustard projectiles and is approximately half-way completed. TOCDF anticipates it will be finished processing the mustard projectiles this summer. Once the mustard projectiles are completed, the next campaign will be the heavy "heels" ton containers. The Division has received the permit modification for these ton containers, which is currently out for public comment.

National Program information includes the following: there are nine sites that currently store chemical munitions in the United States. Two of the nine sites have completed their missions (JACADS and Aberdeen, MD). The Newport, Indiana, site processes VX ton containers only and is 80% complete, the TOCDF facility is 70% complete, Alabama is 40% complete, Oregon is 35% complete, Arkansas is 15% complete, and two alternative technology sites (Kentucky and Colorado) have not yet started agent destruction.

Carlton Christensen asked what the overall quantity at TOCDF was. Mr. Gray stated that when the program initially started, TOCDF stored over 45% of the nation's total stockpile.

X. Other Business

A. Legislative Update

Dennis Downs provided a legislative update on the following bills:

HB 132, Waste Tire Recycling Amendments, sponsored by Neal Hendrickson. This bill reduces the partial reimbursement paid to waste tire recyclers for certain waste tire recycling uses; reduces the partial reimbursement paid to landfill owners for waste tire disposal; and makes technical corrections. Mr. Downs reminded Board members that because the Waste Tire Fund will soon run out, the following options were available to ensure the fund remains solvent. (1) The fee charged on the purchase of new tires could be increased; or (2) The amount that is being paid out to recyclers could be reduced. Waste tire recyclers provided input on this issue and supported the proposal to lower the reimbursements paid out to them. The main goal of all was to ensure this program continues and is successful. This bill passed without any opposition and is waiting for the Governor's signature. The Division was pleased that this bill passed, ensuring that the waste tire program will continue to be successful.

Mr. Downs stated that early in the legislative session budget issues were presented to the Department's Appropriation Subcommittee. Although, the Division of Solid and Hazardous Waste does not receive general fund monies, the Legislature still appropriates all funding the Division receives from various established funding sources. The Division's budget was passed as proposed. Mr. Downs stated the Rick Sprott, Department Director, did an excellent job for the Department in presenting the Department's budget issues to the Legislature this year.

Senate Bill 46 – Anti-Flow Control Amendments, sponsored by Senator Dan Eastman. Dennis Downs stated that there are some counties/special services districts in the State that, in order to maximize their profitability of running their own landfills, have either chosen or are proposing to require that all waste within their area of jurisdiction go to their own facility, regardless of who picks it up and/or transports/collects it. This bill amends the Solid Waste Management Act. This bill defines terms, prohibits a public entity from requiring solid waste to be stored, recovered, or disposed of at a specific waste facility except in certain circumstances, gives a private right of action, and makes technical changes. This bill passed and some accommodations were made for facilities by allowing up to five years for the transition to take place.

Senate Bill 227 – Transportation Revisions, sponsored by Senator Sheldon Killpack. This bill was initiated by Anderson Geneva, and requires the Utah Department of Transportation (UDOT) to consider, to the maximum extent possible, utilization of recycled materials in their road building projects. Geneva wants UDOT to buy their slag and this bill was created to assist with the endeavor. This bill did not pass.

HB 414 – Recycling Amendments, sponsored by Representative Tim Cosgrove. This bill allows certain entities to participate in single stream recycling. This bill defines terms and allows a state agency, school district, or charter school located in a first or second class county to participate in recycling. This bill did receive opposition and the language of the bill was amended which made the bill ineffective. This bill may be reviewed further, as it has been placed on the Master Study Resolution. Craig Forster asked what was the opposition that required the language change. Dennis Downs stated that various concerns included transportation costs to collect recycled goods, the actual collection of the recycled goods, and many school districts were concerned because no funding was associated with this piece of legislation. The specific concern was the cost of implementing a formal recycling program, in addition to what they might already in place. State agencies did not oppose, as the Governor is currently implementing many recycling initiatives.

Dennis Downs stated that most legislation has sunset dates associated with them. Therefore, unless the program is reauthorized by the Legislature, the program sunsets. Most DEQ programs are authorized for 5 to 10 years. The Solid and Hazardous Waste Act and the Used Oil Act will be up for sunset at the next legislative session. These two programs will be discussed at an upcoming Interim Committee Meeting and hopefully the committee will recommend a bill requesting re-authorization of all those programs that will sunset in 2009.

B. Update on field trip to Dugway

Dennis Downs reminded the Board of its determination to tour Dugway Proving Ground during the morning of the May 8, 2008, Board meeting. Arrangements have been made with Dugway for the Board to tour some of the remedial action activities at the facility. Jeff Coombs has offered to host the Board meeting. The Board meeting will be held at the Tooele Health Department. It was determined that the Board must leave early in the morning to get a full tour of Dugway. (It takes approximately 1½ hours to get to Dugway.) Discussion also included the possibility of starting the Board meeting later. Final logistics will be determined at the next meeting. Board members will be asked to bring picture identification to Dugway and no cameras will be allowed.

C. Misc. Information items

Michael Brehm asked about a public notice he received from EPA regarding Utah's authorization application. Dennis Downs stated that each time Congress passes new legislation or the EPA passes new rules, the Division has to play "catch up." Anytime new rules or laws are passed, the State program has to get the appropriate rules and statutes in place and then present them to the EPA to verify that the State program has an equivalent program to the federal program. The authorization application for the next group of rules was the subject of the notice to which Mr. Brehm referred.

D. The next Board meeting will be held on April 10, 2008 at 1:00 p.m., in the UDEQ, Building #2, (Conference Room 101) in SLC.

XI. Adjourn

The meeting adjourned at 2:03 p.m.